

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

March 2, 2001

IN RE:)	
)	
ALL TELEPHONE COMPANIES TARIFF)	DOCKET NO.
FILINGS REGARDING RECLASSIFICATION)	97-00409
OF PAY TELEPHONE SERVICE AS REQUIRED)	
BY FEDERAL COMMUNICATIONS COMMISSION)	
(FCC) DOCKET 96-128)	

**ORDER DENYING UTSE PETITION FOR RECONSIDERATION
AND GRANTING UTSE AN EXTENSION OF TIME**

This matter came before the Tennessee Regulatory Authority ("Authority") at the regularly scheduled Authority Conference held on February 21, 2001 for consideration of *UTSE Petition for Reconsideration* filed by United Telephone-Southeast, Inc. ("UTSE") on February 6, 2001.

I. Factual and Procedural History

On December 19, 2000, the Authority deliberated the merits of Docket No. 97-00409, "the Payphone Docket." The Authority entered the *Interim Order* memorializing the December 19th rulings on February 1, 2001. In the Order, the Authority held that UTSE had submitted a deficient cost study and directed UTSE to file a payphone-specific cost study no later than February 2, 2001.¹ In addition, the Authority directed the local exchange carriers ("LECs") to reimburse the payphone service providers ("PSPs") no later

¹ See *Interim Order*, p. 22 (Feb. 1, 2001).

than sixty (60) days from December 19, 2000.² Recognizing that the Authority had not yet set permanent rates for UTSE and Citizens, the Authority held that any “further adjustments needed after permanent rates are set for UTSE and Citizens shall be ordered at that time.”³

On January 12, 2001, UTSE filed *UTSE Motion for Extension of Time* requesting an extension until March 6, 2001 within which to file its payphone-specific cost study. During the February 6, 2001 Authority Conference, the Authority unanimously voted to grant UTSE an extension until March 6, 2001 to file its payphone-specific cost study.

On February 6, 2001, UTSE filed its Petition seeking reconsideration of that portion of the February 1, 2001 *Interim Order* requiring UTSE to reimburse PSPs no later than sixty (60) days from December 19, 2000. Specifically, UTSE requested that the Authority modify its order such that the reimbursement due date would be no later than thirty (30) days following the entry of the Authority’s order establishing UTSE’s permanent payphone rates. On February 12, 2000, the Tennessee Payphone Owners Association (“TPOA”) filed a letter stating that it does not oppose UTSE’s Petition.

II. Findings and Conclusions

Based on the Petition, response thereto, the *Interim Order*, and the deliberations at the December 19, 2000 Authority Conference, the Authority makes the following findings and conclusions:

1) UTSE asserts two arguments in support of its Petition. First, UTSE states that the Authority has not yet set permanent rates for UTSE and argues that the

² See *id.* at 28, 30. Sixty days from December 19, 2000 is February 17, 2001. Because February 17, 2001 is a Saturday and Monday, February 19, 2001, is a holiday, the reimbursement payment is not technically due until February 20, 2001. See TRA Rules and Regs. of Prac. and Proc., 1220-1-1-.11(1) (Sept. 2000).

³ *Interim Order*, p. 28 (Feb. 1, 2001).

payment should not occur until after the Authority has set permanent rates to avoid multiple refunds in a short period of time. Second, UTSE states that it interpreted the oral deliberations of December 19th to obligate UTSE to pay the refund only after the Authority set permanent rates and, until that time, payment of the refund by UTSE was optional.

2) In rendering its decision during the December 19, 2000 Authority Conference, the Authority considered the fact that it may not be able to set permanent rates for UTSE and Citizens prior to the expiration of the sixty (60) day period and that adjustments may be necessary. This is evident from the following statement of Director Greer: “And by setting the 60 days - - if there’s some adjustment to be made after that 60 days based on how we rule at the end on Citizens and UTSE, then they could make their adjustment accordingly.”⁴

3) The Authority finds that UTSE has not provided any basis for reconsidering a decision based on a fact the Authority previously considered in rendering its decision.

4) The Authority finds that its December 19, 2000 deliberations clearly reflect that the Authority ordered all LECs to pay the reimbursement within sixty (60) days of December 19, 2000. This finding is supported by two comments that demonstrate that Director Malone specifically amended the motion to apply to all the LECs. The comments “I think my motion would cover, with respect to the true-up, all of the LECs”⁵ and “[b]ut I don’t think it presents a problem to order that all of the LECs - - reimbursement from all of the LECs be 60 days from today”⁶ support this conclusion.

⁴ *Transcript of Proceedings*, p. 24 (Dec. 19, 2000 Authority Conference).

⁵ *Id.* at p. 24.

⁶ *Id.*

5) The Authority finds that the TPOA does not oppose, for whatever reason, UTSE's effort to delay its payment of the ordered reimbursement. Furthermore, the Authority finds that it is problematic for this agency to force the reimbursement, which will require some work on the recipient's part, on the TPOA. The Authority also finds, however, that it is necessary to ensure that UTSE does not benefit from continuing to hold the overpayment and time value thereof.

Based on the above findings, the Directors voted unanimously to deny *UTSE Petition for Reconsideration*, to grant UTSE an extension until thirty (30) days following the filing of the Authority's order setting permanent rates for UTSE to pay the reimbursement, and to require UTSE to place the funds that UTSE would have paid or a reasonable approximation of that amount in an escrow account managed by an appropriate third party.

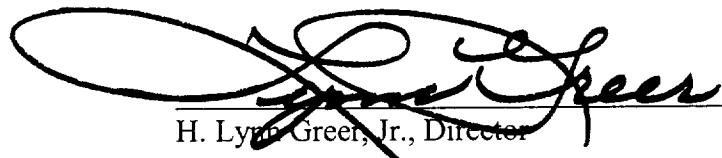
IT IS THEREFORE ORDERED THAT:

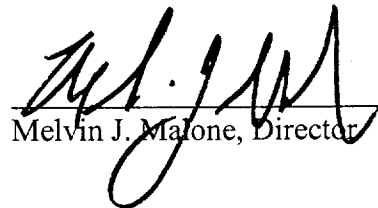
1) *UTSE Petition for Reconsideration* filed by United Telephone-Southeast, Inc. on February 6, 2001 is denied.

2) United Telephone-Southeast, Inc. is granted an extension to reimburse payphone service providers such that the reimbursement ordered to be paid in the *Interim Order*, filed on February 1, 2001, shall be paid no later than thirty (30) days following the filing of the Authority's order adopting permanent payphone rates for United Telephone-Southeast, Inc.

3) United Telephone-Southeast, Inc. shall place the reimbursement amount ordered to be paid in the *Interim Order*, filed on February 1, 2001, or a reasonable approximation of that amount in an escrow account managed by an appropriate third party.


Sara Kyle, Chairman


H. Lynn Greer, Jr., Director


Melvin J. Malone, Director

ATTEST:


K. David Waddell, Executive Secretary